

### REMARKS

This responds to the Office Action mailed on June 12, 2008.

Claims 1-3, 6-7, 9-11, 14, 17-19, 22, 25-27, and 30 are amended, no claims are canceled, and no claims are added; as a result, claims 1-32 are now pending in this application.

#### §102 Rejection of the Claims

Claims 1-32 were rejected under 35 U.S.C. § 102(e) for anticipation by Hoffman et al. (US 2002/0049664 A1). Applicants respectfully traverse these grounds of rejection.

Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration, *In re Dillon*.<sup>1</sup>

#### Concerning independent claims 1, 9, 17, and 25:

Claim 1 is used illustratively below to discuss the patentability of independent claims of independent claims 1, 9, 17, and 25

*Independent claim 1 includes the following elements:*

“**...determining that a high proxy bid is less than a reserve price, wherein the high proxy bid is the highest current proxy bid and the reserve price is the minimum price at which a seller is willing to sell an item; and**

**in response to the determining, automatically publishing at least one of a proxy bid information set by a proxy bidder and the reserve price, wherein the proxy bid information includes the highest price that the proxy bidder is willing to pay for the item”**

The Office Action effectively alleges that the foregoing claimed elements of independent claim 1 are fully disclosed in paragraphs [0014] and [0041] of Hoffman. Applicants respectfully disagree.

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<sup>1</sup> 919 F.2d 688, 16 USPQ2d 1897, 1908 (Fed. Cir. 1990) (en banc), cert. denied, 500 U.S. 904 (1991).

Paragraph [0014] of Hoffman recites:

*“Presuming that the proxy bids are resolved prior to the start of the auction, the UIM is called to begin bidder notification and/or solicitation actions, as determined in part by the data stored in the ADM database. In turn, bidder information obtained by the iterations of the UIM is passed to the RBA and ADM. Once established criteria such as minimum bid, reserve price, identification of bidders, and possible resolution of proxy bids are met, the auction commences. Once started, bid offer and acceptance information is passed between all layers of the invention, and similar information is passed to all active bidders. The bidding and accepting process will continue until there is no higher bid acceptance by any of the participants for a given period of time”*

Paragraph [0041] of Hoffman recites:

*“Create the initial auction environment: Every auction begins with a set of parameters and information. This can include starting bid, reserve prices, number of identical lots available, lot description data (including multi-media data), and any pre-registered proxy bids. Once the system activates a real-time auction, the ADM creates the database structures needed start the auction and maintain the auction history. The information used to seed the ADM database is preferably obtained from a master auction database. Depending upon design criteria, the ADM can manage one or more databases or data tables, although a single database structure comprising multiple data tables for each auction lot is preferred”*

Hoffman relates to systems and methods for implementing systems that permit multiple, concurrent dynamic auction emulations for wide area network environments<sup>2</sup>. Applicants have carefully reviewed Hoffman, including paragraphs [0014] and [0041] referred to by the Office Auction but failed to find any language pertinent to *automatically publishing at least one of a proxy bid information* as recited in independent claim 1. Applicants believe that the Office Action’s rejection is based on mere occurrence of words “reserve price” in paragraphs [0014] and [0041]. However, the Office Action appears to take the “reserve price” words out of the context of the foregoing paragraphs.

For example, paragraph [0014] recites “once established criteria such as minimum bid, reserve price, identification of bidders, and possible resolution of proxy bids are met, the auction commences”. The cited language relates to prerequisites needed (according to Hoffman) for an auction to proceed. On the contrary, independent claim 1 is not concerned with an existence of a

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<sup>2</sup> Hoffman, paragraphs 0001

reserve price but rather requires publishing of *at least one of a proxy bid information and a reserve price* if a high proxy bid is less than the reserve price. Applicants respectfully submit that “establishing criteria such as reserve price” before an auction even begins and publishing of *at least one of a proxy bid information and a reserve price* if a high proxy bid is less than the reserve price are not one and the same.

Paragraph [0041] of Hoffman substantially reiterates what was already stated in paragraph [0014]. “Every auction begins with a set of parameters and information. This can include starting bid, reserve price....” Similarly to paragraph [0014] of Hoffman, paragraph [0014] is not pertinent to publication of *at least one of a proxy bid information and a reserve price* if a high proxy bid is less than the reserve price as required by independent claim 1. Thus, with respect to both paragraphs [0014] and [0041], Applicants cannot find any pertinence, much less a disclosure of independent claim 1. Accordingly, the language of paragraphs [0014] and [0041] cannot be reasonably characterized as disclosing independent claim 1.

Applicants have reviewed the Hoffman reference in its entirety to determine whether Hoffman discloses more than is recited in paragraphs [0014] and [0041]. Applicants respectfully submit that they found no language relating to publication of either a proxy bid information or a reserve price, leave alone publication of *at least one of a proxy bid information and a reserve price* if a high proxy bid is less than the reserve price. Accordingly, Applicants respectfully request withdrawal of the rejection of independent claims 1, 9, 17, and 25.

Concerning claims 2-8, 10-16, 18-24, and 26-32:

**Applicants would like to respectfully remind Examiner that every dependent claim must be examined.** Thus, the Office Action rejects claims 1-32 as being anticipated by Hoffman. However, specific reasons for rejecting of dependent claims 2-8, 10-16, 18-24, and 26-32 are not provided. MPEP requires separate treatment of every rejected claim. In every Office action, each pending claim should be mentioned by number, and its treatment or status given. MPEP 706. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified. MPEP 707.07(i). Moreover, in rejecting claims for want of novelty or for obviousness, **[t]he particular part relied on must be designated as nearly as practicable.** (emphasis added) The pertinence of each reference, if not apparent, must be clearly

explained and each rejected claim specified. MPEP 706.

The Office Action merely states that claims 1-32 are rejected under Hoffman but pertinence of Hoffman to rejecting 2-8, 10-16, 18-24, and 26-32 is not explained. The Office Action is silent with respect to the reasons for rejection of dependent claims 2-8, 10-16, 18-24, and 26-32. Applicants respectfully invite the Examiner to point out the particular parts of Hoffman relied on in rejecting of claims 2-8, 10-16, 18-24, and 26-32.

Because a proper examination of claims 2-8, 10-16, 18-24, and 26-32 was not conducted Applicants respectfully submit that rejection of claims 2-8, 10-16, 18-24, and 26-32 is improper and request that the next office action is made nonfinal.

Regardless of the fact that the independent claims appear to be unexamined, Applicants respectfully submit that dependent claims 2-8, 10-16, 18-24, and 26-32 depend directly or indirectly from their respective independent claims 1, 9, 17, and 25. As such, each of these dependent claims incorporates all the limitations of their respective independent claims. Accordingly, Applicants submit that these dependent claims are patentable for at least reasons set forth above.

Thus, Applicants respectfully request withdrawal of the rejection of claims 2-8, 10-16, 18-24, and 26-32. Applicants further request that proper examination of claims 2-8, 10-16, 18-24, and 26-32 to be conducted if new grounds for rejection are provided. For brevity, Applicants reserve the right to present further remarks concerning the patentable distinctiveness of claims 2-8, 10-16, 18-24, and 26-32.

#### Reservation of Rights

In the interest of clarity and brevity, Applicants may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicants reserve all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicants do not admit that any of the cited references or any other references of record are relevant to the present

claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicants timely object to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicants reserve all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

### CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at 408-278-4051 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date September 12, 2008

By 

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 12<sup>th</sup> day of September 2008.

Dawn R. Shaw

/Dawn R. Shaw/

Name

Signature